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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. PT-2004-2038

OAH No. L-2009041005

11 **JOSEPH SEFA-BOAKYE NIMELY**

DEFAULT DECISION AND ORDER

12 450 W. Foothill Blvd., Apt. 86

13 Pomona, CA 91767

Psychiatric Technician License No. PT 30656

[Gov. Code, §11520]

14 Respondent.

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16 **FINDINGS OF FACT**

17 1. On or about February 15, 2008, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N.,
18 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
19 Psychiatric Technicians, Department of Consumer Affairs, filed Accusation No. PT-2004-2038
20 against Joseph Sefa-Boakye Nimely (Respondent) before the Board of Vocational Nursing and
21 Psychiatric Technicians. (Accusation attached as Exhibit A.)

22 2. On or about July 26, 2000, the Board of Vocational Nursing and Psychiatric
23 Technicians (Board) issued Psychiatric Technician License No. PT 30656 to Respondent. The
24 Psychiatric Technician License was in full force and effect at all times relevant to the charges
25 brought herein, expired on May 31, 2010, and has not been renewed.

26 3. On or about February 15, 2008, Respondent was served by First Class Mail copies of
27 the Accusation No. PT-2004-2038, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
2 required to be reported and maintained with the Board, which was and is 450 W. Foothill Blvd.,
3 Apt. 86, Pomona, CA 91767.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code
6 section 124.

7 5. On or about February 25, 2008, Respondent signed and returned a Notice of Defense,
8 requesting a hearing in this matter. A Notice of Continued Hearing was served by mail at
9 Respondent's address of record and it informed him that an administrative hearing in this matter
10 was scheduled for May 19, 2010. Respondent failed to appear at that hearing. Further, prior
11 Notices of Hearings scheduled for November 19, 2009, and July 24, 2009, were served on
12 Respondent and continuances were granted.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

17 7. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. PT-2004-2038,
26 finds that the charges and allegations in Accusation No. PT-2004-2038, are separately and
27 severally, found to be true and correct by clear and convincing evidence.

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1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$13,039.00 as of May 12, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Joseph Sefa-Boakye Nimely has
6 subjected his Psychiatric Technician License No. PT 30656 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke
9 Respondent's Psychiatric Technician License based upon the following violations alleged in the
10 Accusation which are supported by the evidence contained in the Default Decision Evidence
11 Packet in this case.:

12 a. Business and Professions Code sections 490 and 4521, subdivision (f), for
13 convictions of substantially related crimes.

14 b. Business and Professions Code section 4521, subdivision (a)(5), for dangerous use of
15 alcohol.

16 c. Business and Professions Code section 4521, subdivision (a)(6), for convictions
17 involving the consumption of alcohol.

18 d. Business and Professions Code section 4521, subdivisions (a) and (d), for
19 unprofessional conduct failing to respond to Board correspondences.

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1 ORDER

2 IT IS SO ORDERED that Psychiatric Technician License No. PT 30656, heretofore issued
3 to Respondent Joseph Sefa-Boakye Nimely, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on August 28, 2011.

9 It is so ORDERED July 29, 2011

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13 FOR THE BOARD OF VOCATIONAL NURSING
14 AND PSYCHIATRIC TECHNICIANS
15 DEPARTMENT OF CONSUMER AFFAIRS

16 60625950.DOC
17 DOJ Matter ID:LA2007601401

18 Attachment:
19 Exhibit A: Accusation
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Exhibit A

Accusation

FILED

FEB 15 2008

Board of Vocational Nursing
and Psychiatric Technicians

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Attorneys for Complainant

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2004-2038

JOSEPH NIMELY
450 W. Foothill Blvd., Apt. 86
Pomona, CA 91767

ACCUSATION

Psychiatric Technician License No. PT 30656

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

2. On or about July 26, 2000, the Board issued Psychiatric Technician
License No. PT 30656 to Joseph Nimely (Respondent). The Psychiatric Technician License was
in full force and effect at all times relevant to the charges brought herein and will expire on May
31, 2008, unless renewed.

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1 conviction. The board may inquire into the circumstances surrounding the commission of the
2 crime in order to fix the degree of discipline.

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4 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
5 abetting the violation of, or conspiring to violate any provision or terms of this chapter.

6
7 "(f) Conviction of any offense substantially related to the qualifications,
8 functions, and duties of a psychiatric technician, in which event the record of the conviction shall
9 be conclusive evidence of the conviction. The board may inquire into the circumstances
10 surrounding the commission of the crime in order to fix the degree of discipline."

11 7. Section 490 of the Code provides, in pertinent part, that the Board may
12 suspend or revoke a license when it finds that the licensee has been convicted of a crime
13 substantially related to the qualifications, functions, or duties of a licensed psychiatric technician.

14 8. California Code of Regulations, title 16, section 2578 states:

15 "For the purposes of denial, suspension, or revocation of a license pursuant to
16 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
17 act shall be considered to be substantially related to the qualifications, functions or duties of a
18 licensed psychiatric technician if to a substantial degree it evidences present or potential
19 unfitness of a licensed psychiatric technician to perform the functions authorized by his license in
20 a manner consistent with the public health, safety, or welfare."

21 9. Section 125.3 of the Code provides, in pertinent part, that a Board may
22 request the administrative law judge to direct a licensee found to have committed a violation or
23 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
24 and enforcement of the case.

25 FIRST CAUSE FOR DISCIPLINE

26 (Conviction of Substantially Related Crimes)

27 10. Respondent is subject to disciplinary action under section 4521,
28 subdivision (f) and 490 of the Code, as defined in California Code of Regulations, title 16,

1 section 2578, in that Respondent has been convicted of crimes substantially related to the
2 qualifications, functions or duties of a licensed psychiatric technician, as follows:

3 a. On or about February 8, 2006, Respondent was convicted by the Court on
4 a guilty plea for violating one count of Vehicle Code section 23152, subdivision (a), a
5 misdemeanor (driving under the influence of alcohol/drugs with one prior) and one count of
6 Vehicle Code section 23152, subdivision (b), a misdemeanor (driving while having .08% and
7 more by weight of alcohol in his blood), in the Superior Court of California, County of Orange,
8 Harbor Justice Center, Laguna Niguel Facility, Case No. 05SM02712 entitled *The People of the*
9 *State of California v. Joseph Sefa Boakye Nimely, aka Joseph Sefa Nimely*.

10 b. The circumstances surrounding the conviction are that on or about May
11 23, 2005, Respondent drove a vehicle, while under the influence of alcohol and/or drugs, with a
12 prior and separate conviction for violating Vehicle Code section 23152, subdivision (a). In
13 addition, Respondent drove a vehicle, while having 0.08% and more, by weight of alcohol in his
14 blood.

15 c. On or about May 31, 2005, Respondent was convicted by the Court on a
16 plea of nolo contendere for violating one count of Vehicle Code section 23152, subdivision (b), a
17 misdemeanor (driving while having .08% and more by weight of alcohol in his blood) and one
18 count of Penal Code section 148, subdivision (a)(1), a misdemeanor (resisted, obstructed, or
19 delayed a police officer), in the Superior Court of California, County of Los Angeles, Citrus
20 Judicial District, Case No. 5JM04149 entitled *The People of the State of California v. Joseph*
21 *Sefa Nimely*.

22 d. The circumstances surrounding the conviction are that on or about May 9,
23 2005, Respondent drove a vehicle, while having 0.08% and more, by weight of alcohol in his
24 blood. In addition, Respondent resisted, obstructed, or delayed a police officer attempting to and
25 discharging the duty of his employment.

26 e. On or about July 31, 2002, Respondent was convicted by the Court on a
27 plea of nolo contendere for violating one count of Vehicle Code section 14601.5, subdivision (a),
28 a misdemeanor (driving with a suspended or revoked license), in the Superior Court of

1 California, County of Los Angeles, Pomona Judicial District, Case No. 2PM05159 entitled *The*
2 *People of the State of California v. Joseph Sefa Nimely*.

3 f. The circumstances surrounding the conviction are that on or about July 12,
4 2002, Respondent, while having knowledge that his license was suspended or revoked, drove a
5 vehicle.

6 g. On or about June 14, 2002, Respondent was convicted by the Court on a
7 guilty plea for violating one count of Vehicle Code section 23152, subdivision (a), a
8 misdemeanor (driving under the influence of alcohol/drugs), in the Superior Court of California,
9 County of Los Angeles, Pomona Judicial District, Case No. 2PM04030 entitled *The People of the*
10 *State of California v. Joseph Sefa Nimely*.

11 h. The circumstances surrounding the conviction are that on or about
12 April 7, 2002, Respondent drove a vehicle, while under the influence of alcohol and/or drugs.

13 SECOND CAUSE FOR DISCIPLINE

14 (Dangerous Use of Alcohol)

15 11. Respondent is subject to disciplinary action under section 4521,
16 subdivision (a)(5) of the Code, on the grounds of unprofessional conduct, in that on or about
17 May 9, 2005 and May 23, 2005, Respondent used alcoholic beverages to an extent or in a
18 manner dangerous or injurious to himself, and the public, when he operated a vehicle, while
19 having 0.08% and more, by weight of alcohol in his blood, as more fully set forth above in
20 paragraph 10.

21 THIRD CAUSE FOR DISCIPLINE

22 (Conviction Involving the Consumption of Alcohol)

23 12. Respondent is subject to disciplinary action under section 4521;
24 subdivision (a)(6) of the Code, on the grounds of unprofessional conduct, in that on or about
25 May 31, 2005 and February 8, 2006, Respondent was convicted of crimes involving the
26 consumption of alcohol, as set forth above in paragraph 10a through 10d.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 13. Respondent is subject to disciplinary action under section 4521,
4 subdivisions (a) and (d) of the Code, on the grounds of unprofessional conduct, in that
5 Respondent failed to respond to the Board's letters dated May 23, 2005, May 27, 2005,
6 July 21, 2005, and August 4, 2006, inquiring about his criminal conduct.

7 PRAYER

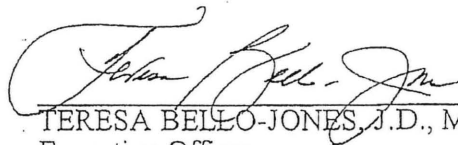
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board issue a decision:

10 1. Revoking or suspending Psychiatric Technician License No. PT 30656,
11 issued to Joseph Nimely;

12 2. Ordering Joseph Nimely to pay the Board the reasonable costs of the
13 investigation and enforcement of this case, pursuant to Business and Professions Code section
14 125.3;

15 3. Taking such other and further action as deemed necessary and proper.
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17 DATED: February 15, 2008

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21 TERESA BELLO-JONES, J.D., M.S.N., R.N.
22 Executive Officer
23 Board of Vocational Nursing and Psychiatric Technicians
24 State of California
25 Complainant

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